impression that "plaintiff had been instrumental in having his asserted cure advertised." (2) Is a publication actionable though entirely couched in commendatory words, when declared upon with the foregoing allegations as to malice and injury? And this question, too, the Supreme Court answered in the affirmative, basing its decision on the broad ground that words of praise, when spoken maliciously, may cause injury. The court also adds that "there is a principle involved, the right of privacy."

Can this decision be sustained on common law principles? Though no precise parallel, it is believed, is to be found in Anglo-Saxon jurisprudence the writer of this note is of the opinion that it can be. The plaintiff's brief, which the writer has had the privilege of examining, relies largely upon article 2315 of the Louisiana Civil Code, which is identical with article 1382 of the Code Napoleon, and reads as follows: "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." This statement of the remedy for tort is broader and more sweeping than can be maintained at the common law, in particulars too well known to require mention here. But the decision of the Supreme Court is not apparently based upon any element of that article which is not also found in the recognized principles of the common law, though undoubtedly the petition in the present case would not satisfy the requirements of the strictly common law declaration in libel. But considering the principle applied in this case as an abstract principle of the law of tort, and excluding consideration of the archaic requirements of the common law regarding inducement, innuendo, etc., in pleading, the case seems sound on principle and in accordance with the general trend of authority.

The nearest approach to the facts in the present case, which the writer has been able to find, is in *Sullings* v. *Shakespeare*, 46 Mich. 408; 41 Am. Rep. 166: 9 N. W. Rep. 451, in which case the defendant had published in his newspaper an article ostentatiously puffing the plaintiff and tending thereby to bring him into ridicule. The case was allowed to go to the jury on the ground that such publication might be actionable, and of course that the question of damage was one for the jury. The jury found for the defendant, largely upon the ground that plaintiff had himself assented to the publication. In the principal case the court seems to regard the offense charged as an invasion of the right of privacy, rather than as an equivalent of the common law libel. The decision is in accordance with one's instinctive notion of "fair play," and is an encouraging indication that our courts are alive to the necessity of impartially but firmly applying general principles to curb the constantly increasing intrusion of the press into private affairs, regardless of the annoyance, humiliation or "damage" thereby inflicted upon the helpless victim.

H. M. B.

THE CY-PRES DOCTRINE.—The court of chancery of New Jersey in the recent case of *Brown et al.* v. *Condit et al.* (Sept. 30, 1905), 61 Atl. Rep. 1055, refused to apply this doctrine under the following circumstances: The will of one Susan M. Corson, bearing date July 7, 1897, disposed of her residuary estate "to the Hospital Fund for Sick Seamen at Navy Yard, Brook-

lyn, New York, care of Mr. John M. Wood, chaplain." It appears that neither at the time of the making of the will nor at any time thereafter was there a fund in existence at or in any way connected with the Brooklyn, New York, Navy Yard that could properly be designated as a "fund for sick seamen." Nor was the said John M. Wood, at the time of the making the will or thereafter a chaplain at said navy yard in any proper sense of the term. He was, however, for several years previous to his death, which took place about a year after the date of the will and about the same time prior to the death of the testatrix, engaged more or less in missionary work at the said navy yard under the auspices of the American Seamen's Friend Society. His duties consisted chiefly in holding religious meetings, and although he had no official connection with the government hospital located at the said navy yard, he had, as stated in the opinion of the court, "the privilege of ministering to the sick sailors in the hospital, presumably to such extent as his services were acceptable to them." Similar privileges were given to the representatives of other benevolent societies. On several occasions, whether before or after the making of her will does not appear, Mrs. Corson sent to Mr. Wood small sums of money with directions, in each instance, that he should with the money get delicacies and flowers for the sick sailors. The court found nothing in the evidence to show that the testatrix was ever interested in any charitable work at the said navy yard except as it was connected with Mr. Wood. After the death of the latter the American Seamen's Friend Society continued its work at the navy yard through other lay missionaries. It appeared, also, that the International Committee of Young Men's Christian Associations, one of the defendants in the case, in March, 1899, established a branch for charitable work among the sailors in the Brooklyn, New York, Navy Yard, their work being of the same kind as that carried on by the American Seamen's Friend Society, but apparently somewhat wider in its scope.

A bill for the construction of this will was filed by the executors, and besides the heirs and next of kin of testatrix, the International Committee of Young Men's Christian Associations, the American Seamen's Friend Society, and the United States of America were made defendants. The Attorney General of the State was made a party at the suggestion of the court. The heirs and next of kin answered, "claiming the entire residuary estate upon the theory that the residuary devise and bequest lapsed." The International Committee of Young Men's Christian Associations answered, and, after describing their charitable work in connection with seamen at the said navy yard, offered to take the residuary fund and apply it according to the charitable purpose of the testatrix. The bill was taken as confessed against the other defendants.

The court held that the charitable donation lapsed and that the residuary estate could not be devoted to charitable purposes through the instrumentality of the cy-pres doctrine. This conclusion was based upon the proposition that the provision in the will, construed in the light of surrounding facts and circumstances, did not show a general charitable intent such as would be necessary for the application of the cy-pres doctrine, but a particular charitable intent to be exercised in a particular way and through the

instrumentality of a designated agency. The court argued that because there was no evidence that the testatrix "ever visited the Brooklyn Navy Yard, or that she had any connection whatever with the sick seamen at that navy yard, or its hospital, excepting through Mr. Wood whom she knew and with whom she corresponded," and because it appeared further that her only contributions to said seamen during her life were made through Mr. Wood, it is proper to conclude that this missionary was an essential factor in the accomplishment of her charitable purposes. "It seems to me," says the court, "that this charitable bequest must be construed practically in the same way as if it had been in the form of a gift to Mr. Wood, to be expended by him as an incident to his missionary work for the benefit of the sick seamen in the hospital of the Brooklyn Navy Yard, with whom he came in personal contact. It might also, in other words, be described as a testamentary charitable effort to support Mr. Wood's personal dispensation of flowers and delicacies among the sick seamen to whom he ministered as a religious teacher. * * * I do not think that Mrs. Corson contemplated any dispensation of this legacy except through the personal efforts of Mr. Wood." The court bases its conclusion upon the proposition, which is sustained by abundant authority, that where it is apparent that it is a testator's purpose that his charitable intent, which is special and particular, shall be carried out through a designated agency and through no other, and that agency fails, the gift lapses.

But there would seem to be room for a difference of opinion as to the nature of the charitable intent in this case and as to the purpose of the testatrix in regard to the carrying out of this intent. The doctrine is elementary that where there is a general charitable intent apparent and that intent cannot be carried out in the manner directed in the will, the agency for the application of the charity not being of the essence of the gift, a court of equity may, cy-pres, where the principles of cy-pres are recognized, authorize the administration of the fund through a similar agency. *Weeks* v. *Hobson,* 150 Mass. 377, 6 L. R. A. 147; *Jackson* v. *Phillips,* 14 Allen 539. But what is a general charitable intent? Is it necessarily confined to those cases in which the entire property of a testator is to be devoted to charitable purposes or in which there is an intent to devote a part of the property to charity generally? Or may there be what the law calls a general charitable intent where the charity is to be applied within certain well-defined lines? Answers to these questions and also a statement of the equitable principles that might well be held to govern this case, are to be found in the following quotation from the opinion of MR. JUSTICE KAY, affirmed on appeal, in the case of *Biscoe* v. *Jackson,* L. R. 35 Ch. Div. (1887), 460, 463, 464: "I quite agree that if the mode of application is such an essential part of the gift that you cannot distinguish any general purpose of charity, but are obliged to say that that mode of doing a charitable act was the only one the testator intended, or at all contemplated, and that he had no general intention of giving his money to charity, then the court cannot, if the particular mode of doing it fails, apply the money cy-pres. On the other hand, if you do see a general intention of benefiting a certain class or number of people, who come within the ordinary definition of objects of charity, and you find that the particular mode the

testator has contemplated of doing this cannot be carried out, and you are convinced that the mode is not so essential that you cannot separate the intention of charity from that particular mode, then the court says there is a general intention of charity, and as the mode has failed, the duty of the court is, favoring charity as the court always does, to provide another mode than that which the testator has pointed out and which has failed." In this case a testator directed his trustees to set apart out of his personal estate that might by law be bequeathed for charitable purposes, a sum of money to be applied in a designated way in the establishment of a soup kitchen and cottage hospital for the parish of S. It becoming impossible to apply the funds exactly as directed in the will, the court held that the will indicated a general charitable intent to benefit the poor of the designated parish, and that, although the bequest could not be carried out in the manner directed in the will, the court would execute the trust cy-pres.

The case under review is not unlike that of *Biscoe* v. *Jackson,* and it might well be argued that the same principles should apply. The case is not one of a bequest to an institution that never existed or that no longer exists, which bequest would undoubtedly lapse. Nor does it seem to be one where the instrumentality selected is of the essence of the bequest. It might well be argued that a general charitable intent to benefit the sick seamen in the Brooklyn Navy Yard is manifested in the residuary clause of this will; that from the language used, it is apparent that the testatrix had "a general intention of benefiting a certain class or number of people, who come within the ordinary definition of objects of charity," *Biscoe* v. *Jackson, supra,* namely, sick seamen at the Brooklyn Navy Yard. The testatrix evidently supposed that there was a fund for sick seamen at this navy yard, and that it was administered by this Mr. Wood, but there is nothing in the language of the residuary clause to indicate that it was her intention that the sick seamen should receive the benefit of her bounty only through the instrumentality of Mr. Wood. Her predominant purpose, as indicated by her language, is the benefit of the sick seamen; the agency for the carrying out of this purpose is an incident. The testatrix did not indicate either by words or acts that she had selected this man because of his special qualities and that no one else should act. It may be suggested in this connection that the fact that during her lifetime she made several remittances to Mr. Wood "to get delicacies for the sick boys and flowers," if properly in the case, should not be of the controlling significance accorded to it by the court, as showing an intention on her part that her charity should be administered only through Mr. Wood. It might well be argued that such acts, taken in connection with the language of the residuary clause, simply indicate a general charitable intent to benefit a certain class of people. It appears that Mr. Wood died about a year after the making of the will and about a year before the death of the testatrix. The fact of there having been no change made in the residuary clause after the death of Mr. Wood, although not alluded to by the court in the published opinion, would seem to be of special significance as bearing upon the attitude of the testatrix in regard to the administration of her bounty. And another fact that is significant as bearing upon the question of charitable intent, is that in the paragraph of the will immediately preceding the residuary clause,

the testatrix disposes of the claims upon her bounty of those who must take if the charitable donation is held to lapse, by declaring that as to them she feels no responsibility as they will upon her death inherit the entire estate of her father, and that she, therefore, gives to each of them five dollars.

There is ample American authority for the conclusion that such a charitable intention as is disclosed in this case may be made effectual through the application of the cy-pres doctrine. In *Winslow* v *Cummings,* 3 Cush. 358, a bequest to "the Marine Bible Society," there being no society of that name, was sustained and a trustee appointed to dispose of the legacy in accordance with the intention of the testator as found by the court. The case of *Bliss* v. *The American Bible Society,* 2 Allen, 334, is to the same effect. Authority of like import is not wanting in New Jersey, the state in which the case under review arose. A bequest to "The Bridgeton Trustees for Free Schools," the income "to be applied annually for ages, as far as may be practicable for the tuition of poor children, without regard to denomination or color, in the elements of English literature" was sustained as a charitable bequest in *McBride* v. *Elmer's Executors,* 6 N. J. Eq. (2 Hal. Ch.) 107, and trustees were appointed for its execution, although there was no such body as the one named, the trustees of public schools (usually called free schools) being the only school trustees in the town of Bridgeton. In *The New York Annual Conference Ministers' Mutual Association Society* v. *Executors of Clarkson,* 8 N. J. Eq. (4 Hal. Ch., 541, a bequest to the "New York Methodist Conference Society for the support of old worn-out preachers," was sustained as a charity, although there was no such society as the one described, and turned over to the complainant society as the one intended by the testatrix. The general attitude of the New Jersey Court of Errors and Appeals in regard to the interpretation of charitable bequests is shown to be a liberal one in *Hesketh* v. *Murphy,* 36 N. J. Eq. 304, the court in the opinion citing with approval the last two cases. In *Kerrigan* v. *Tabb* (N. J. Ch.), 39 Atl. Rep. 701, a legacy to a Catholic priest to be expended for masses for the repose of testatrix's soul was sustained as a bequest to a charitable use, and was held not to lapse upon the death of the trustee before the death of the testatrix, and it was further held that another trustee should be appointed to carry out the trust.

The court, in the case under review, is clearly of the opinion that in New Jersey the cy-pres doctrine, as ordinarily understood, can receive little or no recognition; and yet, Sept. 22, 1905, eight days previous to the decision in this case, the New Jersey Court of Errors and Appeals in *MacKenzie* v. *Trustees of Presbytery of Jersey City,* 61 Atl. Rep. 1027, in a scholarly and well-reasoned opinion, settled affirmatively and apparently beyond controversy, the question of the existence in the state of the doctrine as understood and applied in those states in which it has been accorded a liberal recognition. The case was one in which a provision in a deed for the benefit of a church society, although in the form of a condition, was held to create a charitable trust which could be carried out through the instrumentality of the cy-pres doctrine, if it should, upon a future consideration of the facts in a suit suggested by the court, be found necessary to resort to that doctrine. In the course of the opinion, after a general consideration of the cy-pres doctrine, the court says:

"The objection to the doctrine of cy-pres because of the excesses which have been committed in its name (for the most part when applied by the Chancellor of England, acting under the sign manual of the crown, rather than as a judge of a court of equity), is no longer to be regarded as of weight. Modern decisions have pruned the judicial doctrine so far as it may have needed pruning, and have confined it within sensible limits. The sound rule now is, at least in America, that courts will not execute charitable trusts in a manner different from that intended, unless the intent cannot in the original mode be literally carried out; that they will preserve the substance, although the mode be departed from; and that they will not presume or invent an intention which the testator or donor has not fairly indicated." In connection with a review of some of the leading New Jersey cases upon the subject, the court says that "it can scarcely be denied that our courts have already accepted the cy-pres doctrine in its essence, although they have not labeled it with the name." * * * "On the whole," the court concludes, "we affirm that the judicial doctrine of cy-pres, as pruned and restrained by modern authorities, English and American, and as affected by our own decisions, has a proper place in our jurisprudence, and that after a proper inquiry, it may, if necessary, be applied to the management of the estate or fund in question." In connection with the discussion, the court quotes approvingly the following from the opinion of the Chancellor in *Pennington* v. *Metropolitan Museum of Art et al.,* 65 N. J. Eq. 11, *22,* 55 Atl. Rep. 468, *472,* which we give here as bearing upon the general proposition discussed in the case under review: "If trustees disclose a situation of their trust in which a slavish adherence to the terms of the trust will operate wholly to prevent the benefits intended by its creator, and they seek instructions and directions as to their duty, I think that instructions and directions for a course of conduct which, though different from that prescribed by the terms of the trust, will actually carry out the intent of the creator, may well be grounded upon and sustained by the necessity of the case. The benefits intended for the beneficiaries are the main subjects of consideration. The modes in which those benefits may be attained are incidental, and necessity may require a change of mode in order to produce the intended effect." As sustaining in a general way the charitable donation in the case under review, see *James Schouler, Petitioner,* 134 Mass. 426; *Russell* v. *Allen,* 107 U. S. 163; *Academy of Visitation* v. *Clemens,* 50 Mo. 167; *Cromie's Heirs* v. *Louisville Orphans' Home Society,* 3 Bush. (Ky.) 365. H. B. H.

DUTY OF VENDEE TO SEE TO INVESTMENT OF FUNDS.—Many will no doubt be surprised to learn that the purchaser of land from one having title in his own right may be bound to follow the funds to a prescribed investment in order to make his title to the land good. That such a duty may be imposed on the vendee is illustrated by a recent case.

A man devised his land to his daughter without defining the estate further than that it should be for her sole use and benefit, separate and free from the control of any husband she may marry; and this, by the statutes of the state would operate to give her the fee, as an equitable separate estate, though no